

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Shi *et al.*

#5

Appl. No.: 09/236,113

Filed: January 25, 1999

For: Cathode Arc Source and Graphite

Target

Art Unit: 1753

Examiner: To Be Assigned

Atty Docket: 1581.0250001



Petition Under 37 C.F.R. § 1.47(a)

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

In accordance with the requirements of 37 C.F.R. § 1.47(a) and M.P.E.P. § 409.03(a),
Applicants have filed herewith the following documents:

- (1) Petition for Extension of Time;
- (2) Petition Under 37 C.F.R. § 1.47(a);
- (3) Original Combined Declaration for Patent Application and Power of Attorney;
- (4) Declaration of Dr. Xu Shi under M.P.E.P. § 409.03(d);
- (5) Declaration of George W. Schlich under M.P.E.P. § 409.03(d);
- (6) Copy of SKGF Check No. 25350 in the amount of \$3,116.00 to cover the petition fee as set forth in 37 C.F.R. § 1.17(i) and the five month extension fee as set forth in 37 C.F.R. § 1.17(a)(4).

In the Combined Declaration for Patent Application and Power of Attorney, all of the signing inventors have made the required declarations under 37 C.F.R. 1.47(a) on their own behalf, and on behalf of the non-signing inventor, David Flynn. The Combined Declaration and

Power of Attorney includes the last known address at which Mr. Flynn customarily receives mail, as required by M.P.E.P. § 409.03(e).

The Declarations of Dr. Xu Shi and George W. Schlich under M.P.E.P. § 409.03(d) ("the Xu declaration" and "the Schlich declaration") provide proof of the pertinent facts regarding the refusal of Mr. Flynn to join in the application. As detailed in the Schlich declaration, Mr. Flynn was requested, by letter, to sign the documents relating to the above-referenced application on several occasions. Schlich Declaration, ¶¶ 2-5. Mr. Flynn telephoned Mr. Schlich's firm on May 13, 1999 and informed them that he was not going to sign the documents. Schlich Declaration, ¶ 2. Mr. Flynn advised Mr. Schlich's firm that he was not signing the documents until potential compensation issues were resolved. Schlich Declaration, ¶ 2. Continued attempts to contact Mr. Flynn to have him sign the documents were unsuccessful. Schlich Declaration, ¶ 3-5. On August 4, 1999, Mr. Flynn was again sent the documents for his signature. Schlich Declaration, ¶ 4. Mr. Flynn refused to sign the documents as recently as September 6, 1999. Schlich Declaration, ¶ 5. The Shi and Schlich declarations provide documentary evidence of a *bona fide* attempt to obtain the signature of Mr. Flynn on patent documents.

Applicants respectfully submit that the documents and fees filed herewith satisfy all the requirements of 37 C.F.R. § 1.47(a) and M.P.E.P. § 409.03(a), (d), and (e). Accordingly, Applicants respectfully request that the above-referenced application is accepted, and that a filing receipt is issued in accordance with M.P.E.P. § 409.03(h).

The U.S. Patent and Trademark Office is authorized to charge any deficiency in fees to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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Date: September 13, 1999

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